IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1490

FEDERAL POWER COMMISSION,
Petitioner,

v.

TEXACO INC., *et al.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MEMORANDUM FOR CONSOLIDATED GAS SUPPLY CORPORATION

Consolidated Gas Supply Corporation (Consolidated), an active participant in the administrative proceedings below and an Appellant in the subsequent review proceedings in the District of Columbia Circuit Court of Appeals, hereby notifies this honorable Court that it does not oppose the Government's Petition for Writ of Certiorari filed in these proceedings but reaffirms its opposition to the Federal Power Commission's policy (announced in Order Nos. 428, 428-A and 428-B)[1] of indirectly regulating rates for small independent producers through the review of purchase gas costs in the rate proceedings of the purchasing pipeline companies.

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[1] See 45 FPC 454, 45 FPC 548 and 46 FPC 47 (1971).

STATEMENT

Consolidated[2] is a subsidiary of Consolidated Natural Gas Company, a public utility holding company, which owns and operates a large natural gas system engaged in all phases of the natural gas business, i.e., the production, purchase, gathering, transmission, storage and distribution of natural gas, as well as the extraction and sale of by-products.

Consolidated, its affiliated distributors and its nonaffiliated distributor customers render gas service in West Virginia, Ohio, Pennsylvania and New York. As of 1972, Consolidated supplied gas for more than two million domestic, commercial and industrial customers located in over 1,500 cities and towns having a population of more than 10,500,000. In addition, Consolidated provides substantial gas storage services for a number of gas distributors in the Northeast.

The bulk of the Consolidated System's gas supply (75%) is obtained from six interstate pipelines, but an important part of the System's supply is purchased from independent producers operating in the Appalachian Area. In 1972, purchases from Appalachian sources accounted for approximately 13% of the System's total supply.

Consolidated shares the Commission's concern for the nation's critical gas supply shortage. Until the fall of 1968, the Consolidated System experienced no difficulty in obtaining the additional new supplies that it required. Since then, however, Consolidated has been unable to purchase any additional firm, flowing supplies of natural gas on a long-term basis, despite continuous efforts to acquire such additional supplies. Indeed, three of the Consolidated System's pipeline suppliers are currently unable to deliver the full annual volumes of natural gas required by their sales contracts. As a consequence, Consolidated and its distributor customers were forced early in 1970 to adopt a sales policy which prohibited

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[2]Consolidated is a *natural-gas company* within the meaning of the Natural Gas Act [52 Stat. 821 (1938); 15 USC § 717(b), *et seq.*] and, as such, its rates and charges for sales made in interstate commerce for resale are subject to regulation by the Commission.

the attachment of any new industrial or large commercial loads, and the sale of additional gas to existing industrial customers for use in new processes.[3]

Faced with the declining availability of domestic supplies, the Consolidated System has embarked on an aggressive program to obtain supplemental supplies from nonconventional sources, such as the importation of substantial quantities of LNG from Algeria and the importation of natural gas from Canada. However, the acquisition of nonconventional supplies cannot alone provide the answer to its supply problem. If the Consolidated System is to meet the requirements of its customers, it is essential that an economic climate be created that will encourage domestic producers to search for, develop, and produce large quantities of new domestic supplies.

Throughout the administrative and Court proceedings below, Consolidated consistently took the position that sales by small producers in interstate commerce should be subject to the applicable area ceiling rate fixed by the Federal Power Commission and that, if the area rates were too low to elicit adequate levels of supply, the Commission should, accordingly, make an adjustment in the ceiling price. The domestic supply picture has continued to deteriorate in the year that has elapsed since Consolidated filed briefs in the Court Proceedings below and it is now apparent that extraordinary actions are required to reverse the trend of rapidly diminishing domestic supplies. Consolidated shares the government's view that (Petition, p. 13):

> "Under present conditions, the Commission determined that reliance on the market mechanism

[3]Even more restrictive sales policies have been imposed on the Consolidated System's wholesale customers operating in New York and Pennsylvania by the New York Public Service Commission and Pennsylvania Public Utility Commission, respectively. See Orders issued October 26 and December 16, 1971, in New York Commission Case No. 25,766, and February 1, 1972, in Pennsylvania Commission Investigation Docket No. 124.

would encourage the highly competitive small producers to explore for new supplies of natural gas and would result in just and reasonable rates in the best interests of consumers."

Further, an examination of the Commission's regulatory policy for the Appalachian Area,[4] where small independent producers have always accounted for a significant part of the gas discovered and produced in the Appalachian Area, disclose additional problems. The Commission has acknowledged that the area rates fixed for the Appalachian Area are not high enough to provide small producers with an adequate incentive to explore for new Appalachian reserves.[5] Nonetheless, the Commission elected not to increase ceiling prices for the area primarily because it could not be assured that higher rates would, in fact, elicit additional new supplies and because the Commission felt that its optional pricing procedures prescribed by Order No. 455, issued August 3, 1972 (37 F. R. 16189), would encourage small Appalachian producers to expand their efforts. But, it is now clear that Order No. 455 has not achieved the desired result in the Appalachian Area.

Nearly all of the independent producers operating in the Appalachian Area are extremely small – in many instances, one or two-man operations. They lack the technical expertise to make the type of filings required by the optional procedure. This, coupled with the expense entailed in such proceedings, has effectively prevented the optional pricing procedure from providing the desired stimulus for increased exploration by independent producers. In fact, Consolidated is unaware of *any* small producer operating in the Appalachian Area that has availed itself of the cumbersome and expensive optional pricing procedures established by Order No. 455 in the ten months that such procedures have been in effect.

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[4]The development of new Appalachian supplies is uniquely valuable to the consumers because of their close proximity to the highly ubanized northeastern markets and because of the potential development of new gas fields to storage pools.

[5]*Area Rates for the Appalachian and Illinois Basin Areas*, Opinion No. 639, issued December 12, 1972.

In the circumstances, Consolidated now believes that the Commission was fully justified in exempting small producers (particularly those operating in the Appalachian Area) from area ceiling prices and relying, instead, on market mechanisms to encourage small producers to explore for new domestic supplies of natural gas.

Consolidated continues to contend, however, that the Commission cannot legally regulate the rates charged by small independent producers by requiring purchasing pipelines to prove, in pipeline rate proceedings, the reasonableness of the price paid to small producers exempted from regulation under the Natural Gas Act. It is unfair to expose a pipeline which has contracted in good faith with an exempt producer, and which is obligated to continue paying the contract price, to the possibility of disallowance in a subsequent rate case of costs prudently incurred.

CONCLUSION

WHEREFORE, Consolidated Gas Supply Corporation respectfully requests this Honorable Court to grant the petition for writ of certiorari.

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